IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION.

WRIT PETITION NO.1853 OF 1992.

Shivaji Krishna Barge & ors. : Petitioners

versus

The State of Maharashtra & Anr. : Respondents.

WITH
WRIT PETITION NO.1876 OF 1992.

Gajanan Krishna Sawant & ors. : Petitioners

versus

The State of Maharashtra & Anr. : Respondents.

Mr.A.V.Bandiwadekar for the petitioners.
Mr.S.K.Chinchalikar, AGP, for the respondents.

CORAM : D.G.DESHPANDE, J.

DATED : November 6th, 2006.

COMMON ORAL ORDER [IN CHAMBER] :-

1. Heard advocate for the petitioners and learned AGP for the State. By these petitions, the petitioners have challenged acquisition proceedings in respect of their lands bearing Gat Nos.556 and 593 situated at village Lhasurne, Taluka Koregaon, District Satara. The petitioners have prayed that these proceedings be

quashed and set aside including notifications under sections 4 and 6 of the Land Acquisition Act together with Section 4(1) and section 9(3)(4) and the notices issued to the petitioners by the respondents be quashed and set aside and it will be declared that the petitioners are not liable to give any land for any public purpose in view of their total holding of agricultural lands being less than 8 acres.

2. The advocate for the petitioners contended that both the petitions involve same question and they can be decided by common order.

3. In Petition No.1876 of 1992, there are three petitioners i.e. Gajanan Krishna Sawant and his two sons Balkrishna and Narayan. In Petition No.1853 of 1992 there are 12 petitioners. Prayers in both the petitions are identical. The crucial question is, whether the holding of these petitioners is less than 8 acres and consequently their lands are not liable to be acquired for the resettlement of project affected persons.

4. It is the claim and contention of the

petitioners in W.P.1876/92 that there was a partition of their holding, as a result of which, their holding is reduced to less than 8 acres. The petitioners in this petition have made representation to the Special Land Acquisition Officer vide Exhibit L and in that representation it is stated that Applicant No.1 Gajanan had 0-64 + 0-65 + 0-25 + 0-14 + 0-11 + 0-20 + 0-02; Applicant No.2 Narayan had 0-64 + 0-14 + 0-20 + 0-01 and Applicant No.3 had 0-65 + 0-25 + 0-11 + 0-1 hectares of land. This representation to the Special Land Acquisition Officer is dated 22/2/1991 and, therefore, they contended that even if it is taken that it is combined holding, it is less than 8 acres. Therefore, their land was not liable to be acquired. That is the core issue.

5. As against this, the State has filed detailed affidavit of S.D.Banne, the Deputy Collector and Special Land Acquisition Officer No.4, Satara. In this affidavit the particulars of the holding of land of the petitioners are given. It is further stated that in addition to Gat No.593, the petitioners also hold following land.

Schedule - I

G.No.	Gajanan's holding. H.R.	Balkrishna's holding. H.R.	Narayan's holding. H.R.
151	2-58	--	--
592	--	0-65	--
639	--	0-11	--
184	--	0-01	--
160	--	0-24	--
35	--	0-01	--
594	--	--	0-64
818	--	--	0-14
184	--	--	0-01
216	--	--	0-17
Total	2-58	0-97	0-96

Grand Total 4-51 H.R.

(II)

Common Area :-

G.No.	Area	
641	0-25	
799	0-02	
1018	0-20	
Total	0-47 H.R.	0-47 H.R.

(III)

Remaining Area out of Gat No. 593 after acquisition	4-35
Total area of present holding of the petitioners.	9-33

Thereafter the Special Land Acquisition Officer in his affidavit has stated that Petitioner No.1 Gajanan is alive. Balkrishna and Narayan are his sons. They are having only one Ration Card which shows that they are living together and not separately. Further the petitioners are not cultivating the lands separately. Because there are no mutation entries to support the case of partition and separate possession. It is stated that they are cultivating the lands together, getting crops, production and income together and enjoying the lands jointly. But still they are falsely alleging that they are living separately. It is further stated by the Special Land Acquisition Officer that there is neither any registered or unregistered partition deed amongst them and, therefore, there is no force in any of the contentions raised. It is stated that all the procedure laid down and prescribed has been followed. Notification was issued about acquisition. It was published in two local daily news papers namely Gramoddhar (Satara) and Shivsandesh (Phaltan). It was also published on village Chawadi and served on the petitioners and then published in Government Gazette.

6. The special Land Acquisition Officer has further stated that the petitioners were given time of one month for giving their objections. The notices were served upon them from 25.1.1991 to 1.2.1991 through Talathi. After the period of one month was over, a detailed inquiry was held under Section 5(A) of the Land Acquisition Act. Form 'D' were filled in and sent to the Talathi on 26.2.1991. On that day, the statements of the petitioners were recorded wherein the petitioners had stated that they will send their objections to the Officer concerned by registered post or they will approach the Court and will bring Stay within 15 days. The officer, however, found that the petitioners had not sent any objection nor brought any stay and, therefore, in this background the proposals were sent and approved..

7. Similar affidavit is filed by S.D.Banne, the Deputy Collector and Special Land Acquisition Officer No.4, Satara in Writ Petition No.1853 of 1992. The Special Land Acquisition Officer has stated in the said affidavit that in addition to Gat No.556 the petitioners are holding other lands. The Special Land Acquisition, in his

affidavit, has given the particulars of the holding of land by the petitioners in addition to Gat No.556. They are as under :-

G.No.	Krishna's family	Shankar's family	Haribas's family	Maruti's family
	H.R.	H.R.	H.R.	H.R.
140	1-51	2-10	2-25	2-25
53	--	0-03	0-02	0-02
69	--	0-08	--	--
287	0-05	--	--	--
Total	1-56	2-21	2-27	2-27
i.e.	A.G.	A.G.	A.G.	A.G.
Acres & Gunthas	3.36	5.21	5.27	5.27
+				
Area remained of G. No.556 after acquisi--tion	4.25	4.25	4.24	4.24
Total (Present holding	8.21	10.06	10.11	10.11

It is further stated that the land remained in the name of the petitioners, even after acquisition, is itself more than 8 acres. Thereafter the Special Land Acquisition Officer in his affidavit has stated that the petitioners are having only four ration cards for four brothers and their families which show that they are not living separately but are living together. Further the petitioners are not cultivating the lands separately. Because there are no mutation entries to support the case of partition and separate possession. It is further stated by the Special Land Acquisition Officer there is neither any registered or unregistered partition deed amongst them and, therefore, there is no force in any of the contentions raised. It is also stated that the Khate Utara in Form 8A clearly shows that the holding of the petitioners is more than 8 acres in the name of each brother.

8. If the petitioners, in both the petitions, are repeatedly urging and contending that there was partition amongst themselves, then this contention is not supported at all by any partition deed or revenue entries. And, therefore, when the petitioners, in both the

petitions, are heavily banking upon the theory of partition in order to show that their holdings are less than 8 acres, they are required to prove that fact by producing sufficient and necessary documentary evidence. From the affidavit it is clear that they had not given objections within time and they did not have any documentary evidence in support. Therefore, no fault can be found with either in the procedure adopted or in the order, notification or notices and, therefore, there is no merit in these petitions. In the result, both the petitions are dismissed. Rule in both the petition is discharged.

(D.G.DESHPANDE,J)